



## 2011 LEGISLATIVE SESSION RECAP

### Note From Your Lobbying Team

Done! We are done with the 76th Legislative Session! The Legislature adjourned at 1:20 am on Tuesday, June 7.

So...how did the REALTORS® do this session? Pretty darn good.

#### First: Taxes.

It is clear that the discussion on sales tax on services is not over, and that we'll have to continue fighting that battle (expect to see ballot questions on this). However, the [transaction tax](#) that was proposed this session did not pass, and neither did the [margin tax](#). There was a last minute attempt -- on the last day of the Session, at the last hour of the Session -- to place both taxes on the ballot. In a dramatic move, the Assembly attempted to convene a meeting on the floor of the Assembly and adopt a measure that would have taken the question of a transaction tax and a margin tax directly to the people. However, the effort failed as the Sine Die hour drew closer. So far, so good, right?

What did pass was an extension of the 2009 taxes that were set to expire on June 30, 2011 - they will now expire on June 30, 2013. As part of the budget discussions, there was an agreement to implement education and collective bargaining reform, and the Modified Business Tax (MBT -

aka the payroll tax) was eliminated for businesses with a payroll of less than \$250,000 annually. That should be a savings for most of the membership! Hooray!

#### REALTOR® Issues

As you may remember, NVAR was intimately involved in crafting two pieces of legislation and working with the bill sponsors to accomplish two of the priorities identified by the NVAR Legislative Committee.

The first issue was the prohibition of [private development transfer fees](#) in the state of Nevada. We are happy to report that this bill passed and was signed into law on May 20, 2011.

The second one was to repeal the change in your [licensing period](#). As you probably know, when you renew your real estate license after June 30, 2011, your license will be renewed for four years instead of two, and the cost of license renewal will be proportionately increased. SB413 would have repealed this change and left your licensing period to two years. Sadly, this bill did not pass, due to the \$3 million unsolicited fiscal note that was attached to the bill by the Real Estate Division during the process. A fiscal note is essentially a "price tag" and, as you well know, the Legislature was trying to cut costs; creating a bigger hole was a huge obstacle to overcome. It did not pass out of Senate Finance.

### **How Much Do You Love Your Phone?**

Strictly speaking, this next one is not a real estate bill, but we understand that \*some\* REALTORS® use cell phones for business so this bill may impact you if, say, you use your phone in your car.

[SB140](#) prohibits the use of cell phone without a hands-free device while driving, and prohibits typing/reading data while driving (any non-voice communication, including texting, email, IM, web browsing, etc.). It will be effective October 1. From October 1 to December 31, you can get pulled over and be given a warning. Starting on January 1, 2012, citations will be issued. So - go get that hands-free gadget if you don't have one already, and no more texting while driving!

### **Impact on Transactions**

Some of the bills we deal with will have a direct impact on real estate transactions themselves. Here are updates on a couple of bills we've discussed before.

### **If you read nothing else, read this one...**

Remember that ugly standard for energy consumption form? The form is no more. We've talked about [AB432](#) a lot throughout session. This bill requires energy auditors to be licensed, but more importantly, it repeals that awful energy consumption form and the law which created it. As of June 13, 2011, the form is no longer needed.

We've also talked about [SB403](#) in previous issues - we're happy to report that it was signed by the Governor on June 13. This bill makes sure that a demand letter from an HOA is good for 15 days after receipt. A number of lobbyists for various interests worked hard to defeat this important piece of legislation. However, the good guys won another victory for everyone in the real estate industry. It was hard to believe that there were actual special interests that preferred the status quo, but once again, your Lobbying Team worked hard to push through this important piece of legislation.

### **Foreclosures and Short Sales**

Yeah, that was a hot issue this session.

[SB414](#) was approved by the Governor on June 13, and makes it a misdemeanor for a bank to unreasonably delay responding to a short sale offer. It spells out that acceptance or rejection of an offer should be received within 90 days. It also prohibits a bank from getting a deficiency judgment if they agreed to a short sale (under certain circumstances).

About those deficiency judgments...[AB273](#) was also signed by the Governor. This is the bill that will prevent banks from "double-dipping" and going after the borrower for the full amount of the deficiency when they have received compensation from other sources. It caps the amount a third party can be awarded if they bought the right to the deficiency for pennies on the dollar. Finally, it reduces the amount of time a junior lien holder has to file for a deficiency from the current six years to six months, to be in line with primary lien holders' timeframes (on purchase money).

Update on [SB136](#), a bill that changes the maximum length of time a state-chartered bank may hold real property that they acquired through foreclosure from 10 years to 5 years - this one was signed by the Governor on June 16.

### **Property Management Issues**

[AB360](#) is a bill that mandates local governments to pass an ordinance to afford property owners at least 30 days to fix a nuisance or dangerous/noxious situation that was caused by the criminal activity of someone other than the owner, as long as the situation is not a immediate danger to public health, safety or welfare. The Governor signed this bill into law on June 17.

[AB226](#) is a landlord-tenant bill that adds "functioning door lock" as part of the definition of essential items and services. It also requires a notification to the tenant that a lockout will happen within 24 hours of the sheriff receiving

the order from the court. This bill became law and is effective October 1, 2011.

### **Real Estate Division Bills**

Sadly, [SB227](#), a bill to make the Real Estate Division fee-based, did not pass. This bill would have been useful in ensuring a level of funding for the Division based on the number of licensees rather than on the Executive Budget. The bill did not move out of the Senate until Day 119, and despite a gallant effort by your Lobbying Team, the time grew short for us to get this bill out of the second house. But, if there was a silver lining in the bill's defeat, it was that the Legislature better understood the devastating toll that three cycles of budget cuts has taken on one of the most important industries in the state, and the long-term impact these cuts will have to the Division and the industry as a whole.

[SB314](#) adds a new permit under the umbrella of the Real Estate Division, by requiring the registration and permitting of asset management companies and their employees. More importantly, the bill removes the ability of the banks to waive the SRPD, a complaint that the Lobbying Team heard over and over again from the membership. So, consider it done! Your voices were heard, and SB314 should provide all of you some relief soon.

### **Lake Tahoe**

Only one word can describe this issue -- HISTORIC. Attempted by others frustrated with the Tahoe Regional Planning Agency (TRPA), previous attempts had failed, but this Session had a different dynamic to it. With less than five minutes left before the 1 am deadline to pass bills, [SB271](#) made it out of the Legislature! This bill provides for Nevada to withdraw from the Tahoe Regional Planning Compact. If the Agency does not adopt an updated Regional Plan and the proposed amendments are not approved by October 1, 2015, Nevada's withdrawal from the Compact will become effective on that date unless the Governor issues a proclamation extending the deadline for withdrawal until October 1, 2017. Some of you may know that the TRPA has been creating some issues with

property owners around Lake Tahoe, and the proposed changes to the Compact would hopefully solve those, but the Compact cannot be changed without the approval of the State of California as well as Congress. Your Lobbying Team worked hard to ensure this legislation passed despite a tremendous lobbying effort from opponents of the bill, and some last minute attempts to gut the bill by legislators sympathetic to environmentalists and instead create a study of a potential withdrawal from the Compact and review the existing problems surrounding the Agency. The bill passed the Assembly 28-16, after having passed the Senate by a vote of 19-2. SB271 was literally the second to the last bill approved by the 2011 Legislature just prior to the close of the session. So now what? Much work is left, but a clear message has been sent, despite the opposition's efforts to muddy the message: Nevada's voice needs to be heard, and its opinions need to be considered as the Agency moves forward.

### **HOAs and Collection Fees**

[SB174](#) was one of the complex common-interest communities (CICs) bills this session. Sponsored by Senator Allison Copening, this bill has been contentious from the start, and eventually failed to pass out of Senate Finance. SB174 met a fateful ending, unable to secure enough votes on the floor of the Senate to see the light of day. However, in a last ditch effort by collection companies, the most onerous provisions of SB174, and those provisions which REALTORS® objected to (provisions to make collection fees part of the superpriority lien) found their way into [SB402](#) in a conference committee on the last day of Session. Facing sizable odds against them, your Lobbying Team worked tirelessly until 1 am to beat back this effort, and we are happy to report that, similar to the fate of SB174, SB402 could not find its way out of the Senate. In a rarity even for Carson City, the conference report could not obtain a simple majority for adoption and as a result was left as one of the lingering issues as the clock struck 1 am. A huge victory for homeowners across the state, and a huge loss for the greedy collection companies. Talk about your last

second of session drama! This issue took the cake this session, and will be a memorable one for those involved.

If you have questions, please do not hesitate to contact our President, [Mike Young](mailto:myoung@chaseinternational.com) (myoung@chaseinternational.com), our Legislative Chair, [Joanne Levy](mailto:jlevylasvegas@msn.com) (jlevylasvegas@msn.com), or our CEO, [Rob Wigton](mailto:robw@nvar.org) (robw@nvar.org).

Have a great summer as we all get some long-awaited rest and time with our families.

*Rocky Finseth, Jenny Reese, Teresa McKee, Isabelle Crawford,  
Laura Wood and Lauren Parobek*

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## More Details on the Bills Mentioned Above...

### **AB226 - Became Law**

*Revises various provisions governing landlords and tenants.*

The key provisions of AB226 that are of interest to REALTORS® are:

- a landlord will be required to advise a tenant that if a court issues an eviction notice, a lockout will occur within 24 hours of the sheriff or constable receiving the order; and,
- a functioning door lock would be added to the list of essential items and services defined in NRS 118A.380.

The Governor signed this bill into law on May 18, 2011, and it will be effective October 1, 2011.

### **AB271 - Became Law**

*Regulates private transfer fee obligations that affect real property.*

Last year, NVAR's Legislative Committee identified private transfer fees (aka

reconveyance fee, capital recovery fee, private development transfer tax) as a concern for REALTORS®, as they may create last-minute closing complications, impact home sales and title and lending problems. PTFs have become a concern to states across the country, and 32 states now have laws addressing PTFs or are in the process of addressing them.

The bill does not prohibit an HOA or their management company from assessing a unit transfer fee at the time of resale.

(A PTF is attached to a property as a covenant that requires the payment (typically 1-2% of purchase price) to a private entity every time the property changes hands, for periods up to 99 years.)

Governor Sandoval signed this bill into law on May 20, 2011. It became effective at that time.

### **AB273 - Became Law**

*Revises provisions governing deficiencies existing after foreclosure sales.*

This bill revises provisions governing deficiencies existing after foreclosure sales. This bill changes current law to:

- provide that the amount of a deficiency judgment must be reduced by the amount of any insurance proceeds received or payable to the creditor;
- cap the maximum amount that can be obtained through civil action is the amount paid to the creditor by a third party to acquire the right to enforce the obligation, plus interest and reasonable costs;
- remove the ability to collect on the deficiency under certain circumstances;
- reduce the amount of time a junior lien holder has to obtain a deficiency judgment from the current six years to six months.

Assembly Majority Leader  
Marcus Conklin has been

instrumental in drafting this legislation, and you should know that [NVAR's Face of Foreclosure report](#) was critical in convincing him of the importance of finding a solution for this problem.

The bill was signed by the Governor on June 10, and became effective at that time, except for the change from six years to six months provision that will be effective July 1, 2011.

### **AB360 - Became Law**

*Revises provisions governing city or county ordinances regarding the abatement of certain conditions and nuisances on property within the city or county.*

This bill mandates that local governments pass an ordinance to afford property owners at least 30 days to fix a nuisance or dangerous/noxious situation that was caused by the criminal activity of someone other than the owner, as long as the situation is not a immediate danger to public health, safety or welfare. It also changes the maximum daily fine for nonresidential properties from \$500 to \$750.

Your Lobbying Team has been working on this issue with the City of Reno throughout the interim and the legislative session.

The bill was approved by the Governor on June 17 and became effective at that time.

### **AB432 - Became Law**

*Enacts provisions relating to energy auditors.*

This bill provides for the licensure of energy auditors by the Real Estate Division and establishes the minimum training and qualifications requirements to be licensed. It establishes the requirements for conducting an energy audit (including elements to be evaluated, software and tools to be used, and report to be provided).

It also repeals the section of NRS that mandates the seller to provide an evaluation of energy consumption of the property...what this means is that the seller is no longer required to fill out the energy consumption evaluation form since June 13, 2011.

This bill was signed by the Governor on June 13. The effective date is June 13 for the repeal of current regulations and for the adoption of new regulations to license energy auditors, and July 1, 2011, for all other purposes.

### **AB569 - Did Not Pass**

*Imposes a Nevada Transaction Tax.*

It would have established a transaction tax of 1% on services. The tax would have been paid by the consumer based on the purchase price of the services, and would have taken effect on January 1, 2012. This is the tax on

services proposal we had expected to see this session.

There were a number of exemptions to this transaction tax... but they did not include real estate related services. Here's the list of exemptions that were included:

- services that may not be taxed under the Constitution;
- services provided by or to a governmental entity;
- services provided by or to a nonprofit organization that has a tax-exempt status;
- day care services provided outside of the home of the child;
- health care services;
- personal care services (i.e. nursing homes, individual resident care);
- funeral services;
- obituaries;
- delivery services for natural gas, electricity, or water;
- basic landline telephone service;
- internet access service;
- garbage services;
- tickets purchased subject to an Excise Tax
- promoters of unarmed combat and unarmed combatants (boxing type sports) subject to an Excise Tax
- sale, storage, use or consumption of tangible personal property which is subject to an Excise Tax

The bill would also have defined the purchase price, and excluded the following from the definition (and therefore the tax):

- amount of any rent charged for the rental or lease of any transient lodging or other real or personal property (i.e. monthly rent for a house or apartment, or car rental);
- amount of any bet or wager made in the course of any lottery, game, or other gaming or gambling activity regulated by the State Gaming Control Board;
- amount of any direct premiums or considerations charged for insurance.

One other important provision of AB569 would have been that the transaction tax on services would have had to be paid by the consumer, and the service provider would have had to collect it and remit it to the Department of Taxation on a set schedule (depending on the amount of taxes collected).

Finally, AB569 would have extended the sunset for the 0.35 percent increase in the Local School Support Tax portion of the state's sales and use tax from June 30, 2011, to June 30, 2012. This increase was originally approved in SB429 of the 2009 legislative session.

#### **SB136 - Became Law**

*Revises provisions governing certain real property held by banks.*

This bill:

- changes the maximum length of time a state-chartered bank may hold real property that they acquired through

- foreclosure from 10 years to 5 years,
- adds the ability for a bank to request for an extension to this maximum length of time,
- removes the requirement that a bank annually charge off a certain percentage of the value of such real property.

The bill was signed by the Governor on June 16. It is effective June 16, 2011.

#### **SB140 - Became Law**

*Prohibits the use of a cellular telephone or other handheld wireless communications device while operating a motor vehicle in certain circumstances.*

SB140 prohibits the use of cell phone without a hands-free device while driving. It also prohibits typing/reading data while driving (any non-voice communication, including texting, email, IM, web browsing, etc.).

Violation is a misdemeanor with fines increasing with each offense, and possible license suspension under certain circumstances. This is considered a "primary" offense, meaning that you can get pulled over and cited for it, as opposed to a "secondary" offense (like the seat belt law) where a law enforcement officer cannot pull you over for failure to wear a seat belt but can give you a citation if he pulled you over for another reason and you're not wearing a seat belt.

This bill signed by the Governor on June 17. It is

effective October 1, 2011, with citations being issued starting on January 1, 2012.

#### **SB174 - Did Not Pass**

*Revises provisions relating to common-interest communities.*

SB174 was one of the complex common-interest communities (CICs) bills this session. Sponsored by Senator Allison Copening, this bill has been contentious from the start, and eventually failed to pass out of Senate Finance.

The bill included provisions to cap collection fees, but would also have made the collection fees part of the superpriority lien. When SB174 failed to pass out of Senate Finance, those collection fee provisions were snuck in SB402 as an amendment during the conference committee meeting. However, the Senate failed to adopt the conference committee report and SB402 died.

Which brings us to this question: are collection fees capped or not? Kinda. The Commission for Common-Interest Communities and Condominium Hotels has [adopted a regulation](#) that caps some of the fees involved, and the effective date is May 5, 2011. The actual collection costs are capped at \$1,950, however the other costs (hard costs) continue to be left to market forces under the regulation.

**SB227 - Did Not Pass**

*Revises provisions governing the financial administration of the Real Estate Division of the Department of Business and Industry.*

The main intent of this bill was to make the Real Estate Division (RED) self-funded, which would have meant that the Division would rely on the fees received from its licensees for funding rather than rely on the Executive Budget allocations.

The Real Estate Administrator made a presentation in late February before a joint subcommittee revealing the Division's budget as proposed by Governor Sandoval. Under the Governor's proposal, some services would need to be eliminated or reduced, including:

- closure of all licensing activities in northern Nevada (i.e. less services to be provided to real estate licensees in both the north and the south);
- reductions in the Las Vegas compliance investigation staffing (i.e. less abilities to investigate violations of NRS 645);
- elimination and reduction of staffing for Real Estate Commission meetings and the elimination of at least one Real Estate Commission meeting (i.e. a greater length of time for approval of continuing education classes and handling of disciplinary matters).

SB227 presented a potential solution to these reductions in services by allowing the RED to keep the fees it collects from licensees to operate, and ensure a certain level of service based on the number of licensees rather than on the Executive Budget. It would have ensured that the RED is no longer subject to the across-the-board cuts we have seen over the past few years.

This bill did pass out of the Senate, but did not pass out of Assembly Ways and Means before the Legislature adjourned.

**SB271 - Became Law**

*Provides for withdrawal of the State of Nevada from the Tahoe Regional Planning Compact under certain circumstances.*

This bill provides an option for Nevada to pull out of the Tahoe Regional Planning Compact if California and Congress do not approve the proposed changes to the Compact within a certain timeframe. Some of you may know that the Tahoe Regional Planning Agency (TRPA) has been creating some issues with property owners around Lake Tahoe, and the proposed changes to the Compact would hopefully solve those. The problem is that the Compact cannot be changed without the approval of the State of California as well as Congress, and the changes proposed by the State of Nevada over the years have been essentially ignored by California. This bill provides a last opportunity for

California to approve the changes the State of Nevada feels are necessary, while providing Nevada a way out of the Compact should California decide not to cooperate to fix the problems at the Lake.

The bill was signed by the Governor on June 17. Various provisions are effective at different times, starting June 17, 2011.

**SB314 - Became Law**

*Revises various provisions relating to residential property.*

This bill provides for the registration, permitting and regulation of asset management companies and their employees and agents through the Real Estate Division.

Asset management companies provide management services for real property which is in foreclosure and which is owned by a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, or any subsidiary thereof or a governmental entity. Such companies manage the property, performing services such as securing the property by changing locks, removing trash and debris, cleaning the home and surrounding property, performing maintenance and repairs of homes and disposing of the personal property of homeowners left in homes which are in foreclosure and

which the legal owner has deemed abandoned.

Buried deep in this bill is also a provision that removes the ability for the banks to waive the SRPD, and spells out that a seller may not require a purchaser to waive the SRPD. It also adds that if an asset manager knows of any defects in the property, he must give written notice of the defect(s) to the purchaser.

The bill was signed by the Governor on June 16. It will be effective on June 16, 2011, for the purposes of adopting regulations and performing administrative tasks, and October 1, 2011, for all other purposes.

#### **SB403 - Became Law**

*Revises provisions relating to the information which must be provided by a unit's owner in a resale transaction.*

This bill ensures that the demand letter for an HOA or its management company must remain effective for a period of no less than 15 working days from the date of delivery to the owner or his/her agent, and provide for noticing provisions if the demand changes within that 15-day timeframe.

The bill was signed by the Governor on June 13, and is effective July 1, 2011.

#### **SB413 - Did Not Pass**

*Repeals certain provisions governing licenses issued by the Real Estate Division of the Department of Business and Industry.*

This bill would have repealed the following provisions that are set to take effect on July 1, 2011:

- increase the initial real estate licensing period from 12 to 24 months;
- increase each subsequent licensing period from 24 to 48 months;
- increase (double) the amount of the fee for those licenses.

Had this bill passed, those provisions would have been eliminated from the law and there would have been no change in the licensing period or licensing fees for real estate licensees.

#### **SB414 - Became Law**

*Revises provisions relating to financial institutions.*

This bill does two main things:

- prohibit a banking or other financial institution from unreasonably delaying its response to an offer for a short sale on real property secured by a residential mortgage loan. The bill defines "unreasonable delay" to be more than 90 days after receipt of the offer.

- prevent a deficiency judgement to be awarded to a banking or financial institution if they have agreed to a short sale and other conditions (currently in law) are met.

This bill was signed by the Governor on June 13, and is effective June 13, 2011.

#### **SB491 - Did Not Pass**

*Makes various changes regarding public revenue and taxation.*

A proposed amendment to SB491 would have created a new, broad-based business tax of 1% of the taxable margin of a business (margin tax). The tax would have applied to those businesses whose total revenue exceeds \$1 million per year. Sole proprietorships, general partnership directed by natural persons, and non-profit organizations would have been excluded from the tax. It would have been effective July 1, 2012.

A sunset provision was slipped into the amendment as well - to remove the June 30, 2011 sunset for the \$100 per year increase in the Business License Fee approved in the 2009 bills SB429 and SB435. This would have meant that starting July 1, 2011, the state Business License Fee would have continued to be \$200 per year, but without an "end" date to reduce it back to \$100.

